& Anor. [1990] 1 MLJ 171, *Rajoo s/o Ramasamy v. Inspector General of Police & Ors.* [1990] 1 CLJ 888, and a series of 11 recent appeals heard together, the first being *Poh Chin Kay v. Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor.* [1990] 2 MLJ 297, in all of which the detainee succeeded on purely procedural or technical grounds).

We were of the view that the above observations of the learned Judicial Commissioner and those of the learned Judge reflect the correct attitude of the Courts in interpreting provisions relating to the exercise of the power of detention without a trial. The learned Judicial Commissioner was correct in allowing the respondents' applications, for *habeas corpus* because on the face of it the order was vague as to whether the Deputy Minister had actually applied his mind to the particular circumstances of each respondent's case or whether he had exercised his power of detention mechanically. As was stated by this Court in the case of *Poh Chin Kay (supra)* at p.299:

> ... The power to detain a person without trial cannot be exercised by inference. The power must be expressed, clear and unequivocal. Where detention law and the liberty of the individuals *(sic)* are concerned, this is the most correct approach for the courts to apply. There is hardly any need to repeat what has been said on the principle to be followed by the courts in dealing with detention law. The principle was emphasized in *Re Tan Boon Liat @ Allen & Anor.* [1977] 2 MLJ 108, at p. 114 reiterated by this court in *PP v. Koh Yoke Koon* [1988] 2 MLJ 301 and *Tan Hoon Seng v. Minister of Home Affairs, Malaysia & Anor.* [1990] 1 MLJ 171.

We would conclude by saying that in determining the propriety or legality of a detention order made under s. 4(1) the satisfaction of the Minister has to be considered in the light of the limbs under which he acted. The determination of the question as to whether he addressed his mind to the relevant limb or for that matter to both the limbs in making his detention order is a procedural matter and if it is shown that there is some doubt as to which particular limb the Minister applied his mind to or whether he applied his mind to both the limbs together in grounding his order, the benefit of the doubt must be given to the detenu.

For the above reasons, the two appeals had to be dismissed.

NATIONAL LAND FINANCE CO-OPERATIVE SOCIETY LTD.

v.

DIRECTOR GENERAL OF INLAND REVENUE

SUPREME COURT, KUALA LUMPUR
TAN SRI DATUK GUNN CHIT TUAN CJ (MALAYA),
TAN SRI DATO' HAJI MOHD AZMI BIN DATO' HAJI KAMARUDDIN SCJ,
DATUK WIRA L.C. VOHRAH J.
[CIVIL APPEAL NO. 506 OF 1987]
10 NOVEMBER 1993

REVENUE LAW: Whether the words of the amendment made by Act A471 of 1980 to paragraph 33 of Schedule 9 of the Income Tax Act 1967 was capable of removing the exemption from tax granted to the tax payer by s. 13(1)(f)(ii) of the Income Tax Ordinance 1947.

The appellant, being a society registered under s. 7 of the Co-operative Societies Ordinance 1948, was exempted from paying income tax under s. 13(1)(f)(ii) of the Income Tax Ordinance 1947. On repeal of the Ordinance, the exemption was continued by paragraph 33 of Schedule 9 of the Income Tax Act 1967 (the Act). The Revenue, contending that the amendment to the proviso to the said paragraph 33 by Act A471 of 1980 had removed the exemption and made the amendment retrospective to the year of assessment 1968, raised assessments afresh on the tax payer for the years of assessment 1977 to 1981.

The Special Commissioners of Income Tax discharged the assessments raised holding that the amendment to paragraph 33 of Schedule 9 of the Act did not have the effect of removing the exemption from tax. On appeal by the Revenue, the High Court held that the tax payer no longer enjoyed the exemption by virtue of the said amendment and reversed the decision of the Special Commissioners. The tax payer appealed further.

Held:

[1] It was clear that the tax payer had an acquired right to exemption from tax under the Income Tax Ordinance 1947 when the Act came into force. That acquired right, which was confirmed by the Special Commissioners of Income Tax in Case No. PKR 256, should only be overruled prospectively and not retrospectively.

[2] While the Legislature had made its intention clear in s. 1(5) of the Amendment Act A471 that s. 16 therein which amended Schedule 9 of the Act shall be deemed to have effect for the year of assessment 1968 and subsequent years of assessment, the Amendment Act did not also provide that Part 1 of the Interpretation Acts 1948 and 1967, including s. 30 of that Act, shall not apply. Therefore following the decision of the House of Lords in *Floor v. Davies (Inspector of Taxes)* [1980] AC 695, the provisions of the Act must be construed having regard to the Interpretation Acts of 1948 and 1967, wherein s. 30 of the Interpretation Act 1967 protects an acquired and existing right.

[3] There was therefore a doubt whether the Legislature had intended to impair the existing right of the tax payer and inflict a detriment to it as it takes away a vested right under the existing law to exemption from tax. As there was a doubt the ambiguity must be construed in favour of the tax payer as the said exemption from tax has not been removed by sufficiently clear words to achieve that purpose.

[Appeal allowed with costs. Decision of Judge set aside. Deciding Order of Special Commissioners that assessments be discharged restored].

[Bahasa Malaysia Translation of Headnote]

UNDANG-UNDANG HASIL: Sama ada perkataan-perkataan pemindaan yang dibuat oleh Akta A471 tahun 1980 kepada perenggan 33 Jadual 9 Akta Cukai Pendapatan 1967 berupaya untuk menghapuskan pengecualian daripada cukai yang diberikan kepada pembayar cukai oleh s. 13(1)(f)(ii) Ordinan Cukai Pendapatan 1947.

Perayu, yang merupakan sebuah pertubuhan yang didaftarkan di bawah s. 7 Ordinan Pertubuhan Koperasi 1948, dikecualikan daripada membayar cukai pendapatan di bawah s. 13(1)(f)(ii) Ordinan Cukai Pendapatan 1947. Atas pemansuhan Ordinan tersebut, pengecualian berkenaan diteruskan oleh perenggan 33 Jadual 9 Akta Cukai Pendapatan 1967 (Akta tersebut). Jabatan Hasil, yang menghujahkan bahawa pemindaan ke atas proviso kepada perenggan 33 oleh Akta 471 tahun 1980 tersebut telah menghapuskan pengecualian berkenaan dan membuat pemindaan tersebut secara retrospektif kepada tahun taksiran 1968, menaikkan taksiran yang baru ke atas pembayar cukai bagi tahun-tahun taksiran 1977 hingga 1981.

Pesuruhjaya Khas Cukai Pendapatan telah membatalkan taksiran yang dinaikkan itu dengan memutuskan bahawa pemindaan kepada perenggan 33 Jadual 9 Akta tersebut tidak mempunyai kesan bagi menghapuskan pengecualian daripada cukai. Atas rayuan oleh Jabatan Hasil, Mahkamah Tinggi memutuskan bahawa pembayar cukai tidak lagi menikmati pengecualian atas pemindaan tersebut dan menterbalikkan keputusan Pesuruhjaya Khas. Pembayar cukai membuat rayuan lanjutan.

Diputuskan:

[1] Adalah jelas bahawa pembayar cukai mempunyai hak yang diperolehi kepada pengecualian daripada cukai di bawah Ordinan Cukai Pendapatan 1947 apabila Akta tersebut dikuatkuasakan. Hak yang diperolehi itu, yang disahkan oleh Pesuruhjaya Khas Cukai Pendapatan dalam kes No. PKR 256, patut hanya ditolak secara prospektif dan bukan secara retrospektif.

[2] Sementara Perundangan menunjukkan maksudnya dengan jelas dalam s. 1(5) Akta Pindaan A471 bahawa s. 16 di dalamnya itu yang meminda Jadual 9 Akta tersebut hendaklah disifatkan sebagai mempunyai kesan bagi tahun taksiran 1968 dan tahun-tahun taksiran berikutnya, Akta Pindaan tersebut juga tidak memperuntukkan bahawa Bahagian I Akta-akta Penterjemahan 1948 dan 1967, termasuklan s. 30 Akta tersebut, tidak harus terpakai. Oleh yang demikian mengikut keputusan House of Lords dalam *Floor lwn. Davies (Inspector of Taxes)* [1980] AC 695, peruntukan Akta tersebut mestilah ditakrifkan dengan mengambilkira Akta-akta Penterjemahan 1948 dan 1967, dimana s. 30 Akta Penterjemahan 1967 melindungi hak yang telah diperolehi dan wujud.

[3] Oleh yang demikian, terdapat keraguan sama ada Perundangan tersebut telah bermaksud untuk menghapuskan hak pembayar cukai yang tersedia wujud dan menjejaskannya memandangkan ia merampas hak yang terletakhak di bawah undang-undang yang sedia wujud kepada pengecualian daripada cukai. Memandangkan terdapat keraguan, kesamaran tersebut mestilah ditakrifkan bagi manfaat pembayar cukai kerana pengecualian daripada cukai tersebut tidak dihapuskan oleh kata-kata yang cukup jelas bagi mencapai tujuan tersebut.

[Rayuan dibenarkan dengan kos. Keputusan Hakim diketepikan. Perintah keputusan oleh Pesuruhjaya Khas bahawa taksiran dibatalkan dipulihkan semula].

Cases referred to:
Cape Brandy Syndicate v. I.R.C. 12 T.C. 358 ***(foll)***
Yew Bon Tew v. Kenderaan Bas Mara [1983] 1 CLJ 11 / [1982] 3 All ER 833 ***(refd)***
Pearce v. Secretary of State for Defence [1988] 2 All ER 348 ***(refd)***
Floor v. Davis (Inspector of Taxes) [1980] AC 695 ***(foll)***
Liyanage & Ors. v. Reginam [1966] 1 All ER 650 ***(refd)***
Government of Malaysia v. Zainal bin Hashim [1977] 2 MLJ 254 (FC) ***(cit)***
Keith Sellar v. Lee Kwang [1980] 2 MLJ 191 ***(cit)***
James v. C.I.R. 51 T.C. 628 ***(cit)***
Re Micklewait [1855] 11 Exch 452 ***(refd)***
Oriental Bank Corporation v. Wright [1880] 5 AC 842, 856 ***(refd)***
E.W.P. Limited v. Moore [1992] 1 All ER 880 at 891 ***(refd)***

Legislation referred to:
Co-operative Societies Ordinance 1948, s. 7
Income Tax Act 1967, ss. 91, 127(5), 156, paragraph 12 of Schedule 6, paragraph 33 of Schedule 9
Income Tax (Amendment) Act 1980, ss. 1(5), 16
Income Tax Ordinance 1947, s. 13(1)(f)(ii) (repealed)
Interpretation Acts 1967, ss. 2(3), 30(1)(b)
Interpretation and General Clauses Ordinance 1948, s. 13

Other sources referred to:
Simon's Taxes, Vol. A at p. 225

For the appellant - C.V. Das (Dr. A. Subramaniam, John Matthew with him); M/s. Shook Lin & Bok
For the respondent - Abdul Karim b. Abdul Jalil, SFC (Abdul Halim b. Aman, SFC with him)

JUDGMENT

Gunn Chit Tuan CJ (Malaya):
This appeal by the National Land Finance Co-operative Society Ltd. (the tax payer) raised the question whether the words of the amendment made by Act A471 to paragraph 33 of Schedule 9 of the Income Tax Act, 1967 (the Act) was capable of removing the exemption from tax granted to the tax payer by s. 13(1)(f)(ii) of the Income Tax Ordinance 1947 (Repealed).

The Special Commissioners of Income Tax in their Deciding Order dated 10 June 1987 found that the tax payer is a society registered on 4 June 1960 under s. 7 of the Co-operative Societies Ordinance 1948. It was therefore exempted from payment of income tax under the said section 13(1)(f)(ii) of the Income Tax Ordinance 1947 which conferred exemption from the payment of income tax on any co-operative society registered under the law in force relating to the registration of co-operative societies. The Income Tax Act 1967 came into force on 28 September 1967 and repealed the Income Tax Ordinance 1947 and sub-section 3 of section 1 of that Act stipulates that the Act shall have effect for the year of assessment 1968 and subsequent years of assessment. The exemption conferred by the Income Tax Ordinance 1947, was continued by paragraph 33 of Schedule 9 of the Act and by the said paragraph 33 that exemption was "deemed to have been made by an order under s. 127 of the Act".

There was no dispute that paragraph 33 of Schedule 9 of the Act continued the previous exemption under the Ordinance. The Director General of Inland Revenue (the Revenue) had previously disputed that the exemption was continued under the Act and had raised tax on the tax payer for the years of assessment 1968 to 1975 under the Act when it came into force. In a case No. PKR 256, the Special Commissioners of Income Tax had discharged those assessments on 2 November 1978 and held that the tax payer continued to enjoy the exemption by virtue of the said paragraph 33 read with s. 156 of the Act relating to transitional and saving provisions. It was held by the Special Commissioners that those provisions prevailed over paragraph 12 of Schedule 6 of the Act which limited exemptions from tax for co-operative societies. The Revenue accepted that decision as good law for the purposes of the present appeal. But the Revenue also contended that the amendment to the proviso to the said paragraph 33 by Act A471 of 1980, which came into force on 1 February 1980, had removed the exemption and moreover by s. 1(5) of that Amendment Act A471, the amendment to paragraph 33 of the Act was made retrospective to the year of assessment 1968. Therefore acting under the said Amendment Act A471, the Revenue raised assessments afresh on the tax payer for the years of assessment 1977 to 1981.

In a Deciding Order given on 10 June 1987, the Special Commissioners discharged the said assessments and held that the amendment to paragraph 33 of Schedule 9 of the Act did not have the effect of removing the exemption from tax. On appeal by the Revenue, the High Court on 19 October 1987, reversed the decision of the Special Commissioners and held that the tax

payer no longer enjoyed the exemption by virtue of the said amendment. Unfortunately no written grounds of judgment are available although this appeal has been adjourned several times by the Supreme Court to enable the learned Judge to give his grounds of decision.

On appeal before us on 11 October 1993, Mr. C.V. Das, leading Counsel for the tax payer, contended that the learned Judge had misconstrued the said amendment and the effect it had on paragraph 33 of Schedule 9 of the Act. He pointed out that paragraph 33 remained the same and that the only change made by the Amendment Act was the alteration of the proviso to paragraph 33 by the addition of a paragraph (a) which reads as follows:

> Provided that this paragraph shall not apply in relation to -
>
> (a) any such exemption for which provision is made, with or without modification, in this Act;

Counsel contended that in construing the said amendment certain principles relating to the interpretation of taxing statutes must be followed. Firstly, there is no room for intendment in tax legislation and the rule of strict construction applies. Unless there are clear words tax cannot be imposed. (per Rowlatt J. in *Cape Brandy Syndicate v. I.R.C.* 12 T.C. 358). Another principle is that where the meaning of a statute is in doubt the ambiguity must be construed in favour of the subject. Yet another principle is that an exemption from tax cannot be removed except by sufficiently clear words to achieve that purpose.

On the question of the retrospectivity of the amendment, Counsel pointed out that by s. 1(5) of the Amendment Act, the amendment to paragraph 33 of Schedule 9 of the Act was backdated to 1968. That technically covers the period backwards of 12 years from 1980 when the Amendment Act came into force and is allowable for assessments and additional assessments of back tax under s. 91 of the Act. The Revenue had therefore raised tax going back to the years of assessment 1977 to 1981 and in doing so had proceeded on the assumption that the tax payer had lost the exemption from tax not prospectively but retrospectively. Counsel for the tax payer contended that s. 1(5) of the Amendment Act which made the amendment retrospective is bad in law as it deprived the tax payer of an existing and acquired right which is protected by s. 30(1) (b) of the Interpretation Act 1967.

It was also the contention of Counsel that a statute would not be read retrospectively to deprive some one of existing and acquired rights and he referred to the Privy Council case of *Yew Bon Tew v. Kenderaan Bas Mara* [1982] 3 All ER 833 and the House of Lords' case of *Pearce v. Secretary of State for Defence* [1988] 2 All ER 348 to support his contention. Counsel referred us specifically to the speech of Lord Brightman in *Yew Bon Tew's* case where His Lordship said as follows:

> There are two other statutory provisions which are relevant. Section 13 of the Interpretation and General Clauses Ordinance 1948 provided:
>
> > Where a written law repeals in whole or in part any other written law, then, unless the contrary intention appears, the repeal shall not ... (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any written law so repealed ...
>
> This Act was replaced by the Interpretation Act 1967, s. 30(1)(b) of which says the same thing in different words.

Counsel contended that the tax payer's acquired right was even stronger under the present s. 30 of the Interpretation Act 1967 which reads as follows:

> 30. Matters not affected by repeal
>
> (1) The repeal of a written law in whole or in part shall not -
>
> (a) affect the previous operation of the repealed law or anything duly done or suffered thereunder; or
>
> (b) affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed law; or
>
> (c) affect any penalty, forfeiture or punishment incurred in respect of any offence committed under the repealed law; or
>
> (d) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment,
>
> and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing law had not been made.

(2) Without prejudice to the generality of subsection (1) -

(a) the repeal of a written law which adopts, extends or applies another written law shall not -

(i) invalidate the adoption, extension or application; or
(ii) prejudicially affect the continued operation of the adopted, extended or applied law; and

(b) the repeal of a written law which amends another written law shall not -

(i) invalidate the amendments made by the repealed law; or
(ii) prejudically affect the continued operation of that other law as amended.

Mr. Das also contended that the exemption granted to the tax payer is a substantive right because by s. 127(5) of the Act any of its income was not to be taxed as income for the purpose of tax. He pointed out that the Interpretation Act applies for the construction of a taxing statute and referred us to the House of Lords' case of *Floor v. Davis (Inspector of Taxes)* [1980] AC 695 in which case Viscount Dilhorne, Lord Diplock and Lord Edmund-Davies held that in construing provisions of the U.K. Finance Acts one must, as when construing provisions of other Acts, have regard to the Interpretation Act. It must be borne in mind that the Interpretation Act is to apply unless a contrary intention is shown. It is not the case that an intention that the Act should apply has to be shown for it to apply.

Counsel then contended that the retrospection by s. 1 (5) of the Amendment Act to 1968 was constitutionally bad because it had the effect of nullifying the decision of the Special Commissioners given in PKR 256 in November 1978 in respect of the years of assessments 1968 to 1975. He contended that it violated the essential constitutional principle inherent in government structured under the separation of powers doctrine that a judicial decision cannot be nullified by a legislative act, although it may be changed prospectively by legislative enactment. In support of his contention he referred to the Privy Council case of *Liyanage & Ors. v. Reginam* [1966] 1 All ER 650, and pointed out that although tax was not levied for the period 1968 to 1977, the amendment has the effect, according to the Revenue's interpretation, of making the tax payer liable to tax for the whole backdated period. He stated that by a judicial decision between the same parties it had been decided that the tax payer was not liable for tax even after 1967. He pointed out that the interpretation contended for by the Revenue would necessarily involve nullifying the decision of the Special Commissioners as to the post-1967 tax liability of the tax payer at least for a period of 12 years going back to 1968. Counsel also contended that in as much as the revenue relied on a law that has to treat the judicial decision as inoperative, such a law is constitutionally bad under our separation of powers doctrine based on *Liyanage's* case. He contended that s. 1(5) of the Amendment Act is therefore bad in law and unenforceable and the assessments enabled by it retrospectivity should therefore be discharged.

It was the submission of the Revenue that the words of the amendment to the proviso to paragraph 33 of Schedule 9 of the Act made by the Amendment Act A471 had the effect of qualifying the provisions of that paragraph in the Act. Quite apart from the clear construction of the said proviso it was also contended by the Revenue that it is necessary and relevant also to refer to the scheme of the Act and the history leading to the said amendment. The scheme of the Act was to subject the income of co-operative societies to tax unless the income falls within the ambit of paragraph 12 of Schedule 6 of the Act. The amendment was also as a result of the decision in the case No. PKR 256 as it was the intention to overrule that decision. The leading Revenue Counsel, Encik Abdul Karim bin Abdul Jalil, contended that it was the intention of the Legislature that the said proviso was to qualify paragraph 33 of Schedule 9 of the Act and the Amendment Act A471 had the effect of qualifying the said Schedule 9.

The Revenue did not dispute that the tax payer's income was exempted from income tax under the repealed Income Tax Ordinance 1947, and that the status was saved by s. 156 of the Act read with paragraph 33 of Schedule 9. It was contended, however, that the operation of the main provision of paragraph 33 was now subjected to the qualification or limitation provided in the proviso thereto as amended by Act A471. It was also pointed out that it is a fact that provisions have been made in paragraph 12 of Schedule 6 of the Act in respect of a qualified exemption on income of co-operative societies. But it was contended by the Revenue that the

proviso to paragraph 33 of Schedule 9 had the effect of qualifying the application of the main paragraph 33 and that the learned Judge was right in his interpretation of the said proviso. Revenue Counsel also pointed out that restrospective tax legislation is possible if it is expressed in clear terms and referred to **Simon's Taxes,** Vol. A at p. 225, wherein it is stated that:

> A statute is construed as having retrospective effect only if its retrospective operation is stated in clear terms or arises by necessary and distinct application from its terms.

Three cases were cited in support of the above statement *viz Government of Malaysia v. Zainal bin Hashim* [1977] 2 MLJ 254 (F.C.), *Keith Sellar v. Lee Kwang* [1980] 2 MLJ 191, *James v. C.I.R.* 51 T.C. 628. Reference was also made to s. 2(3) of the Interpretation Act 1967, which states as follows:

> 2(3) PART I shall not apply where there is -
>
> (a) express provision to the contrary; or
> (b) something in the subject or context inconsistent with or repugnant to its application.

But it was the contention of the Revenue that in the present appeal the Amendment Act A471 by s. 1(5) therein has provided as follows:

> 1(5) Section 16 amending the proviso to paragraph 33, the disputed proviso - shall be deemed to have effect for the year of assessment 1968 and subsequent years of assessment.

It was the Revenue's submission that the intention to make the amendment retrospective was in clear terms and therefore valid.

There are ample authorities to show that Courts have refused to adopt a construction of a taxing Act which would impose liability when doubt exists. In *Re Micklewait* [1855] 11 Exch 452 it was held that a subject was not to be taxed without clear words. We realise that revenue from taxation is essential to enable Government to administer the country and that the Courts should help in the collection of taxes whilst remaining fair to tax payers. Nevertheless, we should remind ourselves of the principle of strict interpretation as stated by Rowlatt J. in *Cape Brandy Syndicate v. I.R.C. (supra)*:

> ... in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used ...

It has also been said by the Judicial Committee in *Oriental Bank Corporation v. Wright* [1880] 5 AC 842, 856 "that the intention to impose a charge upon a subject must be shown by clear and unambiguous language".

On the retrospective operation of Acts, the presumption is that an enactment is not intended to have a retrospective operation unless a contrary intention appears. In this case that presumption has been rebutted because s. 1(5) of the Amendment Act A471 states in clear terms that the amendment was intended to be retrospective. But a retrospective operation should not be given to a statute to impair an existing right and it has been stated by the U.K. Court of Appeal in *E.W.P. Limited v. Moore* [1992] 1 All ER 880 at 891:

> ... that those who have arranged their affairs, as the saying is, in reliance on a decision of these courts which has stood for many years should not find that their plans have been retrospectively upset, ...

Moreover, one should avoid a construction that inflicts a detriment and as Lord Brightman has said in *Yew Bon Tew v. Kenderaan Bas Mara (supra)*:

> that a retrospective enactment inflicts a detriment if it takes away or impairs vested right acquired under existing laws or create a new obligation, or imposes a new duty, or attaches a new disability, in regard to events already past.

In this case it is clear that the tax payer had an acquired right to exemption from tax under the Income Tax Ordinance 1947, when the Act came into force on 20 September 1967. That acquired right which was confirmed by the Special Commissioners of Income Tax in Case No. PKR 256 should only be overruled prospectively and not retrospectively. Admittedly the Legislature had made its intention clear in s. 1(5) of the Amendment Act A471 that s. 16 therein which amended Schedule 9 of the Act shall be deemed to have effect for the year of assessment 1968 and subsequent years of assessment. But the Amendment Act A471 did not also expressly provide that Part I of the Interpretation Acts 1948 and 1967 (Act 388) which includes the said s. 30 of that Act shall not apply. Therefore following the decision of Viscount Dilhorne, Lord Diplock and

Lord Edmund-Davies in the House of Lords' case of *Floor v. Davis (Inspector of Taxes) supra*, the provisions of the Act must be construed having regard to the Interpretation Acts 1948 and 1967. There is therefore a doubt whether the Legislature had intended to impair the existing right of the tax payer and inflict a detriment to it as it takes away a vested right under the existing law to exemption from tax. As there is a doubt the ambiguity must be construed in favour of the tax payer as the said exemption from tax has not been removed by sufficiently clear words to achieve that purpose. We therefore allowed the appeal with costs here and below, set aside the decision of the learned Judge and restored the Deciding Order of the Special Commissioners that the assessments be discharged. We also ordered that the deposit be refunded to the tax payer.

WONG SIN CHONG & ANOR.

v.

BHAGWAN SINGH & ANOR.

SUPREME COURT, KOTA BHARU
TAN SIR DATO' HARUN BIN MAHMUD HASHIM,
TAN SRI DATO' HAJI MOHD AZMI BIN DATO' HAJI KAMARUDDIN,
DATO' MOHAMED DZAIDDIN BIN HJ. ABDULLAH SCJJ
[CIVIL APPEAL NO. 02-572 OF 1991]
8 OCTOBER 1993

PRACTICE & PROCEDURE: Action against former solicitors for professional negligence - Issue of writ of subpoena ad testificandum and duces tecum - O. 38 r. 14 RHC 1980 - Subpoena requiring plaintiffs' current Counsel to give oral evidence for the defence and to produce documents - Application to set aside subpoena - Application dismissed with costs - Appeal against decision.

The plaintiffs were sued for general and special damages in an action for wrongful seizure and sale of goods. Judgment in default was entered against the plaintiffs and the plaintiffs application to set aside the judgment was dismissed as was the appeal therefrom. The respondents were the plaintiffs solicitors at the material time and the plaintiffs commenced action against them for professional negligence.

The first respondent acting on behalf of himself and on behalf of the former solicitor's firm issued a writ of subpoena *ad testificandum* and *duces tecum* under O. 38 r. 14 RHC 1980 for the plaintiffs present Counsel to give oral evidence for the defence and as well as to produce documents.

The plaintiffs applied to set aside the subpoena on the ground that their Counsel did not have any personal knowledge on any facts relating to the professional negligence and as such could not give any material evidence. The plaintiffs further contended that the issue of the subpoena had been made *mala fide* and was an abuse of the Court process in that it had been served with a hidden motive of preventing Counsel from continuing to act for them in the partly heard case.

The plaintiffs also contended that to deny them their Counsel's services at this late juncture